

1 SENATE BILL NO. 373

2 INTRODUCED BY K. GILLAN

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO SENTENCING AND TREATMENT
5 OF SEXUAL OFFENDERS; AMENDING SECTIONS 45-5-301, 45-5-302, 45-5-303, 45-5-502, 45-5-503,
6 45-5-504, 45-5-507, 45-5-603, 45-5-625, 46-18-202, 46-18-205, 46-18-222, 46-23-201, AND 53-1-203, MCA;
7 AND PROVIDING A DELAYED EFFECTIVE DATE."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10
11 NEW SECTION. **Section 1. Sentencing of sexual offenders.** (1) Upon sentencing a person convicted
12 of a sexual offense, as defined in 46-23-502, the court shall designate the offender as a level 1, 2, or 3 offender
13 pursuant to 46-23-509.

14 (2) The court shall order a person convicted of a sexual offense and sentenced to imprisonment in a state
15 prison, as defined in 53-30-101, to:

16 (a) enroll in and successfully complete the educational phase of the prison's sexual offender program;
17 and

18 (b) if the person has been or will be designated as a level 3 offender pursuant to 46-23-509, enroll in and
19 successfully complete the cognitive and behavioral phase of the prison's sexual offender program.

20 (3) A person who has been ordered to enroll in and successfully complete a phase of a state prison's sex
21 offender program is not eligible for parole unless that phase of the program has been successfully completed as
22 certified by a sexual offender evaluator to the board of pardons and parole.

23 (4) A person who has been convicted of violating 45-5-503 or 45-5-625, who is designated by the
24 sentencing judge pursuant to 46-23-509 as a level 3 offender, whose victim was 12 years of age or younger, and
25 who was more than 7 years older than the victim at the time of the offense shall be punished by imprisonment
26 in a state prison for a term of 100 years. The imposition or execution of the first 25 years of the sentence may
27 not be deferred or suspended. The sentencing judge may limit the person's parole eligibility pursuant to
28 46-18-202. The court may also impose a fine not to exceed \$50,000.

29 (5) (a) A person who has been convicted of a sexual offense and who is designated by the sentencing
30 judge pursuant to 46-23-509 as a level 1 or level 2 offender may be punished by commitment to the department

1 of corrections for placement in an appropriate correctional facility or program for a term of not less than 4 years
2 or more than the maximum penalty permitted by law. However, the court shall suspend that part of a term of
3 imprisonment that is more than 10 years.

4 (b) During the first 4 years of a term of commitment to the department of corrections pursuant to
5 subsection (5)(a), the department may place the person in a residential sex offender treatment program operated
6 or approved by the department in a correctional facility or correctional program.

7 (c) If the person successfully completes a residential sex offender treatment program operated or
8 approved by the department of corrections during the first 4 years of a term of commitment to the department,
9 the remainder of the term must be served on probation unless the department petitions the sentencing court to
10 amend the original sentencing judgment. The court may also impose a fine not to exceed \$50,000.

11 (6) In sentencing a person pursuant to subsection (5), the court shall require the offender to participate
12 in the program for continuous, satellite-based monitoring provided for in 46-23-1010 during that part of a sentence
13 not served in a state prison.

14 (7) In sentencing a person pursuant to subsection (5), the court shall, as condition of probation or parole,
15 order that the person:

16 (a) abide by the standard conditions of probation established by the department of corrections;

17 (b) pay the costs of imprisonment, probation, and any sex offender treatment if the person is financially
18 able to pay those costs;

19 (c) have no contact with the victim or the victim's immediate family unless approved by the victim or the
20 victim's parent or guardian, the person's therapists, and the person's probation officer;

21 (d) comply with all requirements and conditions of sex offender treatment as directed by the person's sex
22 offender therapist;

23 (e) not enter an establishment where alcoholic beverages are sold for consumption on the premises or
24 where gambling takes place;

25 (f) not consume alcoholic beverages;

26 (g) enter and remain in an aftercare program as directed by the person's probation officer;

27 (h) submit to random or routine drug and alcohol testing; and

28 (i) not possess pornographic material or access pornography through the internet.

29 (8) The sentencing of a sexual offender is subject to 46-18-219.

30 (9) The sentencing court may, upon petition by the department of corrections, modify a sentence of a

1 sexual offender to impose a part of a sentence that was previously suspended.

2

3 **Section 2.** Section 45-5-301, MCA, is amended to read:

4 **"45-5-301. Unlawful restraint.** (1) A person commits the offense of unlawful restraint if ~~he~~ the person
5 knowingly or purposely and without lawful authority restrains another so as to interfere substantially with ~~his~~ the
6 other person's liberty.

7 (2) A person convicted of the offense of unlawful restraint shall, except as provided in [section 1], be
8 fined not to exceed \$500 or imprisoned in the county jail for any term not to exceed 6 months, or both."

9

10 **Section 3.** Section 45-5-302, MCA, is amended to read:

11 **"45-5-302. Kidnapping.** (1) A person commits the offense of kidnapping if the person knowingly or
12 purposely and without lawful authority restrains another person by either secreting or holding the other person
13 in a place of isolation or by using or threatening to use physical force.

14 (2) A person convicted of the offense of kidnapping shall, except as provided in [section 1], be
15 imprisoned in the state prison for a term of not less than 2 years or more than 10 years and may be fined not
16 more than \$50,000, except as provided in 46-18-219 and 46-18-222."

17

18 **Section 4.** Section 45-5-303, MCA, is amended to read:

19 **"45-5-303. Aggravated kidnapping.** (1) A person commits the offense of aggravated kidnapping if the
20 person knowingly or purposely and without lawful authority restrains another person by either secreting or holding
21 the other person in a place of isolation or by using or threatening to use physical force, with any of the following
22 purposes:

23 (a) to hold for ransom or reward or as a shield or hostage;

24 (b) to facilitate commission of any felony or flight thereafter;

25 (c) to inflict bodily injury on or to terrorize the victim or another;

26 (d) to interfere with the performance of any governmental or political function; or

27 (e) to hold another in a condition of involuntary servitude.

28 (2) Except as provided in 46-18-219, ~~and~~ 46-18-222, and [section 1], a person convicted of the offense
29 of aggravated kidnapping shall be punished by death or life imprisonment as provided in 46-18-301 through
30 46-18-310 or be imprisoned in the state prison for a term of not less than 2 years or more than 100 years and may

1 be fined not more than \$50,000; unless the person has voluntarily released the victim alive, in a safe place, and
2 with no serious bodily injury, in which event the person shall be imprisoned in the state prison for a term of not
3 less than 2 years or more than 10 years and may be fined not more than \$50,000."

4

5 **Section 5.** Section 45-5-502, MCA, is amended to read:

6 **"45-5-502. Sexual assault.** (1) A person who knowingly subjects another person to any sexual contact
7 without consent commits the offense of sexual assault.

8 (2) A person convicted of sexual assault shall, except as provided in [section 1], be fined not to exceed
9 \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

10 (3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if
11 the offender inflicts bodily injury upon anyone in the course of committing sexual assault, the offender shall,
12 except as provided in [section 1], be punished by life imprisonment or by imprisonment in the state prison for a
13 term of not less than 4 years; unless the judge makes a written finding that there is good cause to impose a term
14 of less than 4 years and imposes a term of less than 4 years, or more than 100 years and may be fined not more
15 than \$50,000.

16 (4) An act "in the course of committing sexual assault" includes an attempt to commit the offense or flight
17 after the attempt or commission.

18 (5) Consent is ineffective under this section if:

19 (a) the victim is incarcerated in an adult or juvenile correctional, detention, or treatment facility and the
20 perpetrator is an employee, contractor, or volunteer of the facility and has supervisory or disciplinary authority
21 over the victim; unless the act is part of a lawful search; or

22 (b) the victim is less than 14 years old and the offender is 3 or more years older than the victim."

23

24 **Section 6.** Section 45-5-503, MCA, is amended to read:

25 **"45-5-503. Sexual intercourse without consent.** (1) A person who knowingly has sexual intercourse
26 without consent with another person commits the offense of sexual intercourse without consent. A person may
27 not be convicted under this section based on the age of the person's spouse, as provided in 45-5-501(1)(b)(iv).

28 (2) A person convicted of sexual intercourse without consent shall, except as provided in [section 1], be
29 punished by life imprisonment or by imprisonment in the state prison for a term of not less than 2 years or more
30 than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222.

1 (3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or
2 if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent,
3 the offender shall, except as provided in [section 1], be punished by life imprisonment or by imprisonment in the
4 state prison for a term of not less than 4 years or more than 100 years and may be fined not more than \$50,000,
5 except as provided in 46-18-219 and 46-18-222.

6 (b) If two or more persons are convicted of sexual intercourse without consent with the same victim in
7 an incident in which each offender was present at the location where another offender's offense occurred during
8 a time period in which each offender could have reasonably known of the other's offense, each offender shall,
9 except as provided in [section 1], be punished by life imprisonment or by imprisonment in the state prison for a
10 term of not less than 5 years or more than 100 years and may be fined not more than \$50,000, except as
11 provided in 46-18-219 and 46-18-222.

12 (c) If the offender was previously convicted of an offense under this section or of an offense under the
13 laws of another state or of the United States that if committed in this state would be an offense under this section
14 and if the offender inflicted serious bodily injury upon a person in the course of committing each offense, the
15 offender shall, except as provided in [section 1], be:

16 (i) punished by death as provided in 46-18-301 through 46-18-310, unless the offender is less than 18
17 years of age at the time of the commission of the offense; or

18 (ii) punished as provided in 46-18-219.

19 (d) If the victim was incarcerated in an adult or juvenile correctional, detention, or treatment facility at the
20 time of the offense and the offender had supervisory or disciplinary authority over the victim, the offender shall
21 be punished by imprisonment in the state prison for a term of not more than 5 years or fined an amount not to
22 exceed \$50,000, or both.

23 (4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial
24 resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the
25 offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The
26 amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

27 (5) As used in subsection (3), an act "in the course of committing sexual intercourse without consent"
28 includes an attempt to commit the offense or flight after the attempt or commission."
29

30 **Section 7.** Section 45-5-504, MCA, is amended to read:

1 **"45-5-504. Indecent exposure.** (1) A person commits the offense of indecent exposure if the person
2 knowingly or purposely exposes the person's genitals under circumstances in which the person knows the
3 conduct is likely to cause affront or alarm in order to:

4 (a) abuse, humiliate, harass, or degrade another; or

5 (b) arouse or gratify the person's own sexual response or desire or the sexual response or desire of any
6 person.

7 (2) (a) A person convicted of the offense of indecent exposure shall, except as provided in [section 1],
8 be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term of not more than 6 months,
9 or both.

10 (b) On a second conviction, the person shall, except as provided in [section 1], be fined an amount not
11 to exceed \$1,000 or be imprisoned in the county jail for a term of not more than 1 year, or both.

12 (c) On a third or subsequent conviction, the person shall, except as provided in [section 1], be punished
13 by life imprisonment or by imprisonment in a state prison for a term of not less than 5 years or more than 100
14 years and may be fined not more than \$10,000."

15

16 **Section 8.** Section 45-5-507, MCA, is amended to read:

17 **"45-5-507. Incest.** (1) A person commits the offense of incest if the person knowingly marries, cohabits
18 with, has sexual intercourse with, or has sexual contact, as defined in 45-2-101, with an ancestor, a descendant,
19 a brother or sister of the whole or half blood, or any stepson or stepdaughter. The relationships referred to in this
20 subsection include blood relationships without regard to legitimacy, relationships of parent and child by adoption,
21 and relationships involving a stepson or stepdaughter.

22 (2) Consent is a defense under this section to incest with or upon a stepson or stepdaughter, but consent
23 is ineffective if the victim is less than 18 years old.

24 (3) A person convicted of incest shall, except as provided in [section 1], be punished by life imprisonment
25 or by imprisonment in the state prison for a term not to exceed 100 years or be fined an amount not to exceed
26 \$50,000.

27 (4) If the victim is under 16 years of age and the offender is 3 or more years older than the victim or if
28 the offender inflicts bodily injury upon anyone in the course of committing incest, the offender shall, except as
29 provided in [section 1], be punished by life imprisonment or by imprisonment in the state prison for a term of not
30 less than 4 years or more than 100 years and may be fined not more than \$50,000.

1 (5) In addition to any sentence imposed under subsection (3) or (4), after determining the financial
2 resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the
3 offender, if able, to pay the victim's reasonable costs of counseling that result from the offense. The amount,
4 method, and time of payment must be determined in the same manner as provided for in 46-18-244."

5

6 **Section 9.** Section 45-5-603, MCA, is amended to read:

7 **"45-5-603. Aggravated promotion of prostitution.** (1) A person commits the offense of aggravated
8 promotion of prostitution if the person purposely or knowingly commits any of the following acts:

9 (a) compels another to engage in or promote prostitution;

10 (b) promotes prostitution of a child under the age of 18 years, whether or not the person is aware of the
11 child's age;

12 (c) promotes the prostitution of one's spouse, child, ward, or any person for whose care, protection, or
13 support the person is responsible.

14 (2) (a) Except as provided in [section 1] and subsection (2)(b) of this section, a person convicted of
15 aggravated promotion of prostitution shall be punished by:

16 (i) life imprisonment; or

17 (ii) imprisonment in a state prison for a term not to exceed 20 years or a fine in an amount not to exceed
18 \$50,000, or both.

19 (b) Except as provided in 46-18-219, ~~and 46-18-222~~, and [section 1], a person convicted of aggravated
20 promotion of prostitution of a child, who at the time of the offense is under 18 years of age, shall be punished by:

21 (i) life imprisonment; or

22 (ii) imprisonment in a state prison for a term of not less than 4 years or more than 100 years or a fine in
23 an amount not to exceed \$100,000, or both."

24

25 **Section 10.** Section 45-5-625, MCA, is amended to read:

26 **"45-5-625. Sexual abuse of children.** (1) A person commits the offense of sexual abuse of children if
27 the person:

28 (a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual
29 conduct, actual or simulated;

30 (b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or

1 videotapes, or records a child engaging in sexual conduct, actual or simulated;

2 (c) knowingly, by any means of communication, including electronic communication as defined in
3 45-8-213, persuades, entices, counsels, or procures a child under 16 years of age or a person the offender
4 believes to be a child under 16 years of age to engage in sexual conduct, actual or simulated;

5 (d) knowingly processes, develops, prints, publishes, transports, distributes, sells, exhibits, or advertises
6 any visual or print medium, including a medium by use of electronic communication, as defined in 45-8-213, in
7 which a child is engaged in sexual conduct, actual or simulated;

8 (e) knowingly possesses any visual or print medium, including a medium by use of electronic
9 communication, as defined in 45-8-213, in which a child is engaged in sexual conduct, actual or simulated;

10 (f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing that
11 the activity is of the nature described in those subsections; or

12 (g) possesses with intent to sell any visual or print medium, including a medium by use of electronic
13 communication, as defined in 45-8-213, in which a child is engaged in sexual conduct, actual or simulated.

14 (2) (a) A person convicted of the offense of sexual abuse of children shall, except as provided in [section
15 1], be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years
16 and may be fined not more than \$10,000.

17 (b) Except as provided in 46-18-219 and [section 1], if the victim is under 16 years of age, a person
18 convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment
19 in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than
20 \$10,000.

21 (c) Except as provided in 46-18-219 and [section 1], a person convicted of the offense of sexual abuse
22 of children for the possession of material, as provided in subsection (1)(e), shall be fined not to exceed \$10,000
23 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

24 (3) An offense is not committed under subsections (1)(d) through (1)(g) if the visual or print medium is
25 processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to
26 sell, or if the activity is financed, as part of a sex offender information or treatment course or program conducted
27 or approved by the department of corrections."
28

29 **Section 11.** Section 46-18-202, MCA, is amended to read:

30 **"46-18-202. Additional restrictions on sentence.** (1) The sentencing judge may also impose any of

1 the following restrictions or conditions on the sentence provided for in 46-18-201 that the judge considers
2 necessary to obtain the objectives of rehabilitation and the protection of the victim and society:

- 3 (a) prohibition of the offender's holding public office;
4 (b) prohibition of the offender's owning or carrying a dangerous weapon;
5 (c) restrictions on the offender's freedom of association;
6 (d) restrictions on the offender's freedom of movement;
7 (e) a requirement that the defendant provide a biological sample for DNA testing for purposes of Title
8 44, chapter 6, part 1, if an agreement to do so is part of the plea bargain;
9 (f) any other limitation reasonably related to the objectives of rehabilitation and the protection of the
10 victim and society.

11 (2) Whenever the sentencing judge imposes a sentence of imprisonment in a state prison for a term
12 exceeding 1 year, the sentencing judge may also impose the restriction that the offender is ineligible for parole
13 and participation in the supervised release program while serving that term. If the restriction is to be imposed,
14 the sentencing judge shall state the reasons for it in writing. If the sentencing judge finds that the restriction is
15 necessary for the protection of society, the judge shall impose the restriction as part of the sentence and the
16 judgment must contain a statement of the reasons for the restriction.

17 ~~(3) An offender convicted of a sexual offense, as defined in 46-23-502, except an offense under 45-5-301~~
18 ~~through 45-5-303, and sentenced to imprisonment in a state prison shall enroll in and complete the educational~~
19 ~~phase of the prison's sexual offender program."~~

20
21 **Section 12.** Section 46-18-205, MCA, is amended to read:

22 **"46-18-205. Mandatory minimum sentences -- restrictions on deferral or suspension.** (1) ~~Except~~
23 ~~as provided in [section 1],~~ if the victim was less than 16 years ~~old~~ of age, the imposition or execution of the first
24 30 days of a sentence of imprisonment imposed under the following sections may not be deferred or suspended
25 and the provisions of 46-18-222 do not apply to the first 30 days of the imprisonment:

- 26 (a) 45-5-503, sexual intercourse without consent;
27 (b) 45-5-504, indecent exposure;
28 (c) 45-5-505, deviate sexual conduct; or
29 (d) 45-5-507, incest.

30 (2) Except as provided in 45-9-202, ~~and 46-18-222,~~ and [section 1], the imposition or execution of the

1 first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or
2 suspended:

3 (a) 45-5-103(4), mitigated deliberate homicide;

4 (b) 45-5-202, aggravated assault;

5 (c) 45-5-302(2), kidnapping;

6 (d) 45-5-303(2), aggravated kidnapping;

7 (e) 45-5-401(2), robbery;

8 (f) 45-5-502(3), sexual assault;

9 (g) 45-5-503(2) and (3), sexual intercourse without consent;

10 (h) 45-5-603, aggravated promotion of prostitution;

11 (i) 45-9-101(2), (3), and (5)(d), criminal distribution of dangerous drugs;

12 (j) 45-9-102(4), criminal possession of dangerous drugs; and

13 (k) 45-9-103(2), criminal possession with intent to distribute dangerous drugs.

14 (3) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of
15 imprisonment imposed under 45-5-102, deliberate homicide, may not be deferred or suspended."
16

17 **Section 13.** Section 46-18-222, MCA, is amended to read:

18 **"46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition**
19 **and suspended execution of sentence. (1)** Mandatory minimum sentences prescribed by the laws of this state,
20 mandatory life sentences prescribed by 46-18-219, and the restrictions on deferred imposition and suspended
21 execution of sentence prescribed by 46-18-201(1)(b), 46-18-205, 46-18-221(3), 46-18-224, and 46-18-502(3) do
22 not apply if:

23 ~~(1)~~(a) the offender was less than 18 years of age at the time of the commission of the offense for which
24 the offender is to be sentenced;

25 ~~(2)~~(b) the offender's mental capacity, at the time of the commission of the offense for which the offender
26 is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the
27 prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an
28 impairment for the purposes of this subsection (1)(b).

29 ~~(3)~~(c) the offender, at the time of the commission of the offense for which the offender is to be sentenced,
30 was acting under unusual and substantial duress, although not ~~such~~ duress as that would constitute a defense

1 to the prosecution;

2 ~~(4)(d)~~ the offender was an accomplice, the conduct constituting the offense was principally the conduct
3 of another, and the offender's participation was relatively minor;

4 ~~(5)(e)~~ in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual element
5 of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of
6 the offense; or

7 ~~(6)(f)~~ the offense was committed under 45-5-502(3) and the judge determines that treatment of the
8 offender in a local community affords a better opportunity for rehabilitation of the offender and for the ultimate
9 protection of the victim and society, in which case the judge shall include in ~~its~~ the judgment a statement of the
10 reasons for ~~its~~ the determination.

11 (2) This section does not apply to a sexual offense, as defined in 46-23-502."

12

13 **Section 14.** Section 46-23-201, MCA, is amended to read:

14 **"46-23-201. Prisoners eligible for nonmedical parole.** (1) Subject to the restrictions contained in
15 [section 1] and subsections (2) through (5) of this section, the board may release on nonmedical parole by
16 appropriate order any person who is confined in a state prison or the state hospital or any person who is
17 sentenced to the state prison and confined in a prerelease center when in its opinion there is reasonable
18 probability that the prisoner can be released without detriment to the prisoner or to the community.

19 (2) Persons under sentence of death, persons sentenced to the department who have been placed by
20 the department in a state prison temporarily for assessment or sanctioning, and persons serving sentences
21 imposed under 46-18-202(2) or 46-18-219 may not be paroled.

22 (3) A prisoner serving a time sentence may not be paroled under this section until the prisoner has
23 served at least one-fourth of the prisoner's full term.

24 (4) A prisoner serving a life sentence may not be paroled under this section until the prisoner has served
25 30 years.

26 (5) A parole may be ordered under this section only for the best interests of society and not as an award
27 of clemency or a reduction of sentence or pardon. A prisoner may be placed on parole only when the board
28 believes that the prisoner is able and willing to fulfill the obligations of a law-abiding citizen."

29

30 **Section 15.** Section 53-1-203, MCA, is amended to read:

1 **"53-1-203. Powers and duties of department of corrections.** (1) The department of corrections shall:

2 (a) adopt rules necessary to carry out the purposes of 41-5-123 through 41-5-125, rules necessary for
3 the siting, establishment, and expansion of prerelease centers, rules for the establishment and maintenance of
4 residential methamphetamine treatment programs, rules for the operation of a residential sexual offender
5 treatment program, and rules for the admission, custody, transfer, and release of persons in department programs
6 except as otherwise provided by law. However, rules adopted by the department may not amend or alter the
7 statutory powers and duties of the state board of pardons and parole. The rules for the siting, establishment, and
8 expansion of prerelease centers must state that the siting is subject to any existing conditions, covenants,
9 restrictions of record, and zoning regulations. The rules must provide that a prerelease center may not be sited
10 at any location without community support. The prerelease siting, establishment, and expansion must be subject
11 to, and the rules must include, a reasonable mechanism for a determination of community support or objection
12 to the siting of a prerelease center in the area determined to be impacted. The prerelease siting, establishment,
13 and expansion rules must provide for a public hearing conducted pursuant to Title 2, chapter 3.

14 (b) subject to the functions of the department of administration, lease or purchase lands for use by
15 correctional facilities and classify those lands to determine those that may be most profitably used for agricultural
16 purposes, taking into consideration the needs of all correctional facilities for the food products that can be grown
17 or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the
18 persons confined in correctional facilities;

19 (c) contract with private, nonprofit Montana corporations to establish and maintain:

20 (i) prerelease centers for purposes of preparing inmates of a Montana prison who are approaching parole
21 eligibility or discharge for release into the community, providing an alternative placement for offenders who have
22 violated parole or probation, and providing a sentencing option for felony offenders pursuant to 46-18-201. The
23 centers shall provide a less restrictive environment than the prison while maintaining adequate security. The
24 centers must be operated in coordination with other department correctional programs. This subsection does not
25 affect the department's authority to operate and maintain prerelease centers.

26 (ii) residential methamphetamine treatment programs for the purpose of alternative sentencing as
27 provided for in 45-9-102, 46-18-201, 46-18-202, and any other sections relating to alternative sentences for
28 persons convicted of possession of methamphetamine. The department shall issue a request for proposals using
29 a competitive process and shall follow the applicable contract and procurement procedures in Title 18.

30 (iii) a residential sexual offender treatment program.

- 1 (d) use the staff and services of other state agencies and units of the Montana university system, within
2 their respective statutory functions, to carry out its functions under this title;
- 3 (e) propose programs to the legislature to meet the projected long-range needs of corrections, including
4 programs and facilities for the custody, supervision, treatment, parole, and skill development of persons placed
5 in correctional facilities or programs;
- 6 (f) encourage the establishment of programs at the local and state level for the rehabilitation and
7 education of felony offenders;
- 8 (g) administer all state and federal funds allocated to the department for youth in need of intervention
9 and delinquent youth, as defined in 41-5-103;
- 10 (h) collect and disseminate information relating to youth in need of intervention and delinquent youth;
- 11 (i) maintain adequate data on placements that it funds in order to keep the legislature properly informed
12 of the specific information, by category, related to youth in need of intervention and delinquent youth in
13 out-of-home care facilities;
- 14 (j) provide funding for and place youth who are adjudicated to be delinquent or in need of intervention
15 and who are committed to the department;
- 16 (k) administer youth correctional facilities;
- 17 (l) provide supervision, care, and control of youth released from a state youth correctional facility; and
- 18 (m) use to maximum efficiency the resources of state government in a coordinated effort to:
- 19 (i) provide for delinquent youth committed to the department; and
- 20 (ii) coordinate and apply the principles of modern correctional administration to the facilities and programs
21 administered by the department.
- 22 (2) The department and a private, nonprofit Montana corporation may not enter into a contract under
23 subsection (1)(c) for a period that exceeds 20 years. The provisions of 18-4-313 that limit the term of a contract
24 do not apply to a contract authorized by subsection (1)(c). Prior to entering into a contract for a period of 10 years,
25 the department shall submit the proposed contract to the legislative audit committee. The legislative audit division
26 shall review the contract and make recommendations or comments to the legislative audit committee. The
27 committee may make recommendations or comments to the department. The department shall respond to the
28 committee, accepting or rejecting the committee recommendations or comments prior to entering into the
29 contract.
- 30 (3) The department of corrections may enter into contracts with nonprofit corporations or associations

1 or private organizations to provide substitute care for youth in need of intervention and delinquent youth in youth
2 correctional facilities.

3 (4) The department may contract with Montana corporations to operate a day reporting program as an
4 alternate sentencing option as provided in 46-18-201 and 46-18-225 and as a sanction option under 46-23-1015.
5 The department shall adopt by rule the requirements for a day reporting program, including but not limited to
6 requirements for daily check-in, participation in programs to develop life skills, and the monitoring of compliance
7 with any conditions of probation, such as drug testing."

8
9 **NEW SECTION. Section 16. Codification instruction.** [Section 1] is intended to be codified as an
10 integral part of Title 46, chapter 18, part 2, and the provisions of Title 46, chapter 18, part 2, apply to [section 1].

11

12 **NEW SECTION. Section 17. Effective date.** [This act] is effective January 1, 2008.

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